



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Stacor Corporation

File: B-231095

Date: July 5, 1988

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### DIGEST

Agency properly allowed offeror to correct price omission in its best and final offer (BAFO), without reopening discussions with other offerors in the competitive range, where offeror's pricing pattern throughout negotiation process indicated intent to offer the same price for the omitted item as it offered for same item in its initial proposal and for similar item in its BAFO.

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### DECISION

Stacor Corporation protests the award of a requirements contract to Jebco, Inc., under request for proposals (RFP) No. FCNOC-C1-2092-N, issued by the General Services Administration (GSA) in part for map and filing cabinets in three geographic zones. Stacor contends that GSA improperly allowed Jebco to correct its best and final offer (BAFO) after the deadline for receipt of BAFOs and without conducting discussions with all offerors. Jebco's BAFO omitted prices for one of the nine cabinet sections in each zone.

We deny the protest.

The relevant section of the RFP solicited offers for cabinets of three different sizes: Size 1 (the smallest); Size 2; and Size 3 (the largest). Each cabinet size consisted of a base section, a 5-drawer section and a top section. Items 1-9 for the three geographic zones constituted Aggregate Award Group No. 1. Award was to be made on an aggregate by group basis for each zone. In order to qualify for an award on a zone group, offerors were required to price each item in the group for the zone.

Of the eleven initial offers received by the July 9, 1987, closing date, only six, including Jebco's offer, were for items 1-9 in Aggregate Award Group 1.

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Jebco's offer was as follows:

<u>Item #</u>	<u>Supplies</u>	<u>Zone 1 Unit Price</u>	<u>Zone 2 Unit Price</u>	<u>Zone 3 Unit Price</u>
1	Size 1: base section	\$ 47	\$ 48	\$ 49
2	Size 1: 5-drawer section	223	232	270
3	Size 1: top section	47	48	49
4	Size 2: base section	47	48	49
5	Size 2: 5-drawer section	251	262	307
6	Size 2: top section	47	48	49
7	Size 3: base section	47	48	49
8	Size 3: 5-drawer section	281	295	347
9	Size 3: top section	47	48	49

As is evident from the above, Jebco consistently bid \$47 for each top section in zone one, \$48 for each top section in zone two, and \$49 for each top section in zone three.

Subsequently, by amendment 2, GSA consolidated the 5-drawer section and the top section into one unit/item. In its response, Jebco noted that it was meeting this new requirement by providing a combination of the same two sections, and for all three zones offered the sum total of its initial prices for the two items. By inference, when factored out of the total offer, Jebco's prices for the top section remained \$47 for each top section in zone one, \$48 for each top zone section in zone two and \$49 for each top section in zone three.

Later, by amendment 3, effective July 9, the RFP reverted to the original requirement that the base section, 5-drawer section and top section be separate units. On September 14, GSA requested by letter that BAFOs be submitted by September 23. This letter was confirmed by follow-up telephone calls to each of the bidders. On September 22, GSA received Jebco's BAFO. The BAFO omitted a price for item 9 in all three zones. The prices on the 5-drawer section in zone three were lowered from Jebco's initial proposal. These lower prices were noted by asterisks and were the only changes from the initial

proposal prices. Jebco conditioned its acceptance on the inclusion of zone one in any award.

The GSA contract specialist contacted Jebco by telephone on September 22 about the omission of prices for item 9. Jebco stated that its BAFO prices for item 9 had not changed from its original offer. GSA asked Jebco to verify its BAFO prices in writing, and Jebco sent a letter verifying its prices on September 24.

Stacor contends that because the RFP required unit prices for all items in each geographic zone, GSA should not have awarded a contract to Jebco, whose BAFO omitted prices for item 9 in each of the three geographic zones. Stacor argues that the omission of prices was a material defect which could not be corrected because GSA was not able to assume with certainty the exact amount of the omitted price items. According to Stacor, GSA's telephone conversation with Jebco constituted discussions, and GSA should not have awarded a contract to Jebco without reopening discussions with all offerors in the competitive range. Stacor further argues that Jebco's letter dated September 24, which included prices for item 9, was untimely submitted after the September 23 BAFO deadline.

GSA replies that it properly clarified Jebco's clerical error of omitting prices for item 9. According to GSA, it is clear from a review of Jebco's entire proposal that Jebco intended to offer the same prices for item 9 as in its initial proposal, and GSA clarified this intent on September 22. GSA notes that because Jebco verified its offer without knowledge of Stacor's bid and remained consistent in its pricing pattern, the clarification did not rise to the level of discussions and did not prejudice Stacor's interests.

When a mistake is suspected or alleged before award in a negotiated procurement, the Federal Acquisition Regulation (FAR) contemplates that the mistake will be resolved through clarifications or discussions. See FAR §§ 15.607(a) and 15.610(b)(4) (FAC 84-16). The thrust of the regulation is that correction of a mistake, without conducting discussions with all offerors, is appropriate only where the existence of the mistake and the proposal actually intended can be clearly and convincingly established from the RFP and the proposal itself. See Standard Manufacturing Co., 65 Comp. Gen. 451 (1986), 86-1 CPD ¶ 304; Ralph Korte Construction Co., Inc., B-225734, June 17, 1987, 87-1 CPD ¶ 603.

We find the situation here analogous to that in sealed bid procurements, where we have permitted bidders to correct a price omission after bid opening when the IFB contained bidding schedules for similar items and the vender bid consistently on the same item elsewhere in the bid. See e.g., ConChem Enterprise, B-187795, Oct. 12, 1977, 77-2 CPD ¶ 284; Slater Electric Co., B-183654, Aug. 26, 1975, 75-2 CPD ¶ 126. In those cases, we reasoned that the bidder's pricing pattern indicated its intent to bid the same amount for the omitted item as it bid for the same item elsewhere in the IFB. Telex Communication, Inc., et al., B-212385, et al., Jan. 30, 1984, 84-1 CPD ¶ 127. Under these circumstances, the price omission could be corrected even where a solicitation provision stated that failure to bid on an item would cause the bid to be rejected. Burnside-Ott Aviation Training Center, Inc., B-228937, Nov. 6, 1987, 87-2 CPD ¶ 461.

We agree with GSA that a review of Jebco's initial proposal, response to amendment 2, and BAFO reveals a consistent pricing pattern that clearly establishes Jebco's intended price for item 9. Jebco offered the identical prices, corresponding to zone, for the top cabinet section throughout the negotiation process. The prices remained consistent at \$47 for zone one, \$48 for zone two, and \$49 for zone three. The pricing pattern clearly indicates that the omission of a price for item 9, a top cabinet section, was anomalous, and that the price intended was \$47 for zone one, \$48 for zone two and \$49 for zone three.

Stacor argues that Jebco had not established a clear pricing pattern because it changed its prices on some items between its initial offer and its BAFO. However, the only prices that varied were those for the 5-drawer section (items 2, 5 and 8), not those for the top section (items 3, 6 and 9).

Stacor also contends that revisions to the solicitation between the time of the initial offer and the BAFO submission would require an offeror to amend its pricing strategy. Thus, Stacor notes that amendment 2 instructed offerors to weld together the top section and the 5-drawer unit, while amendment 3 reversed the requirement and instructed offerors to price separate top sections. The fact remains, however, that Jebco did not change its pricing strategy for the top sections (items 3, 6 and 9). In response to amendment 2's consolidation of the 5-drawer section and the top section into one unit/item, Jebco offered the sum total of its initial prices for the items. In response to amendment three, Jebco's prices for the top sections (items 3 and 6) remained the same as in its initial offer: \$47 for zone one, \$48 for zone two and \$49 for zone three.

Stacor further argues that GSA's telephone conversation with Jebco about the omission of prices for item 9, in which Jebco stated that its item a BAFO prices had not changed from its original offer, constituted discussions. According to Stacor, GSA should not have awarded a contract to Jebco without reopening discussions with all offerors in the competitive range, who were prejudiced by being denied an opportunity to revise their proposals and lower their prices.

We disagree. Communication with offerors to resolve apparent clerical mistakes is clarification, not discussions. FAR § 15.607; Southern Systems, Inc.--Request for Reconsideration, B-224533.2, June 2, 1987, 87-1 CPD ¶ 560. Clarification, unlike discussions, does not give the offeror the opportunity to revise or modify its proposal, except to the extent (as here) that correction of a clerical mistake will result in a revision. See FAR § 15.601 (FAC 84-28); Harry Kahn Associates, Inc., B-216306.2, June 28, 1985, 85-1 CPD ¶ 739. GSA's clarification did not prejudice the interest of other offerors, requiring that discussions be reopened with the other offerors in the competitive range. Jebco verified its offer without knowledge of its relative standing and remained completely consistent in its pricing pattern. Jebco remained the low offeror throughout the negotiations, and there is no evidence to support Stacor's assertion in its comments that Stacor would have further lowered its prices in another round of discussions.

Stacor also contends that Jebco's September 24 letter to GSA contained "modifications" to Jebco's BAFO, which were received by GSA after the BAFO deadline had passed and were therefore untimely. However, as we indicated above, clarification does not give an offeror the opportunity to modify its proposal except to the extent that correction of a clerical mistake will result in a revision. We view Jebco's September 24 letter, which included prices for item 9, as a correction of its clerical mistake, not a modification of its BAFO.

The protest is denied.

*for Seymour E. Hinchman*  
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General Counsel